IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re:		**No. 28469-7-III**
CAROL MARIE SCHNEIDER, f/k/a CAROL MARIE ALMGREN,	)	**Division Three**
Respondent,	)	
and	)	
JEFFREY JOSEPH ALMGREN,	)	**UNPUBLISHED OPINION**
Appellant.	)	

Sweeney, J. —The appellant-father here challenges a trial court's child support order awarding postsecondary educational support to the parties' daughter and denying his request to lower his child support obligation to the parties' minor son. He contends that the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, did not authorize the award for the daughter. The UIFSA governs a state's right to enforce or modify another state's child support order. A Washington order was being modified here, so the UIFSA does not apply. Moreover, an award of postsecondary educational

support is proper if based on a finding that the child is dependent and relying on the parents for basic necessities and based on the court's consideration of different factors about the child and the parents. RCW 26.19.090(2). The record here supports the court's finding that the daughter relied on both parties for basic necessities. And it shows the court properly considered factors listed in the statute. The award was therefore proper. The court's decision not to reduce the father's child support obligation to the parties' minor son was also proper. A trial court may adjust a child support order once every 24 months based upon changes in income. RCW 26.09.170(9)(a). But the father produced no proof that his income changed. We, therefore, affirm the court's order of child support and its findings and conclusions.

FACTS

Jeffrey Almgren and Carol Schneider's marriage was dissolved by a district court in Stanton County, Nebraska, on June 6, 1997. The court's decree of dissolution awarded Ms. Schneider custody of the couple's two children, daughter Amanda Almgren and son J.D.A. Amanda's birthday is December 24, 1990, and J.D.A.'s birthday is October 31, 1993. The decree ordered that Mr. Almgren pay $421 per month as long as both children are minors and then $293 per month when only J.D.A. is a minor.

The decree gave Mr. Almgren the right to claim Amanda as a dependent

exemption for tax purposes, and it gave Ms. Schneider the right to claim J.D.A. It also ordered that Mr. Almgren pay 45 percent of health care costs not covered by insurance. The court also entered orders that modified visitation terms and added a health insurance provision to the parties' decree on June 22, 1999, and September 4, 2001, respectively.

Sometime after the Nebraska court entered the original decree, Mr. Almgren moved to Minnesota and Ms. Schneider and the children moved to Washington. In December 2005, Ms. Schneider registered the Nebraska decree and orders in Asotin County Superior Court in Washington. She moved to modify Mr. Almgren's child support obligation under the Nebraska decree and asked the court to review the dependent tax exemption award.

In January 2007, Asotin County Superior Court entered an order of child support that increased Mr. Almgren's child support obligation to $343.87 per child per month. The court ordered Mr. Almgren to pay child support "until the children reach the age of 18 or as long as the children remain enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14." Clerk's Papers (CP) at 24. It also ordered that Mr. Almgren pay 47.76 percent of extraordinary health care expenses exceeding $72.00. The order reserved Ms. Schneider's right to petition for postsecondary educational support provided that she exercise the right before Mr. Almgren's support

obligation terminated. And the following language supplemented the original tax exemption provision: "Once [Amanda] has reached the age of majority, the parties shall alternate using JDA as a tax exemption." CP at 25.

Ms. Schneider moved to modify the 2007 child support order in January 2009 because Amanda was "in need of post secondary educational support because the child is in fact dependent and is relying upon the parents for the reasonable necessities of life." CP at 40. In June 2009, Mr. Almgren moved to adjust his child support obligation based on a claim that he lost his job due to cutbacks. Ms. Schneider lost her grant-funded job around the same time. And both reported that their attempts to find new employment had been unsuccessful.

The court held a hearing, took testimony, and listened to argument on the motions in July 2009. On September 1, 2009, the court entered the order of child support that is the subject of this appeal. It found that Mr. Almgren and Ms. Schneider had been unemployed since June 2009 but were employable despite the economy because of their education and training. Accordingly, the court used historical incomes from 2008 and 2009 to calculate their child support obligations. It then ordered Mr. Almgren to continue paying $343.87 per month for J.D.A. and it ordered him to pay $5,000 per year for Amanda's postsecondary educational support until her 23rd birthday. It found that the

amount ordered in child support for J.D.A. was a deviation from the standard calculation because it was lower than the standard calculation. And it based its postsecondary educational support award on these findings:

> 2) A.J.A's post-secondary support: The Court finds that Amanda is in fact dependent and is relying upon the parents for the reasonable necessities of life. The child has graduated from high school in May of 2009 with sufficient grades and aptitude to pursue a college education. In fact, the child has applied and been accepted and plans to attend [Eastern Washington] University commencing with the Fall term of 2009. Significantly, A.J.A. has taken the pre-college tests, is motivated to attend, has the potential to go and succeed and her Mother and Stepfather have a desire for the children to attend college. If the parents had not divorced they would have supported college course study. During the marriage Carol Almgren completed Bachelor and Master Degree[s] and Jeffrey Almgren has advanced post-secondary education training.
>
> 3) The Court reviewed the financial estimates presented by Eastern Washington University and finds that the reasonable costs of a year's worth of education for A.J.A. is $15,000.

CP at 318. The trial court's order also gave Ms. Schneider the right to claim J.D.A. every year as a dependent exemption for tax purposes. And it required that Mr. Almgren pay .491 percent of extraordinary health care expenses.

Mr. Almgren unsuccessfully moved the court to reconsider its order and then appealed.

DISCUSSION

Trial Court's Authority To Award Postsecondary Educational Support

Mr. Almgren contends that the

UIFSA did not give the trial court authority to order him to pay postsecondary educational support for his daughter. We review de novo the issue of a superior court's statutory authority. *Storedahl Props., LLC v. Clark County*, 143 Wn. App. 489, 496, 178 P.3d 377, *review denied*, 164 Wn.2d 1018 (2008).

The UIFSA governs a state's right to enforce or modify another state's child support order, including the right to alter the duration of the duty of support. RCW 26.21A.550(4) provides that the law of the state that issued the initial controlling order governs the duration of a child support obligation *in a proceeding to modify another state's child support order*:

> In a proceeding to modify a child support order [of another state], the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

Here, a Nebraska court entered the initial controlling child support order in 1997. So Mr. Almgren asserts that Nebraska law controls the duration of his duty to pay child support and limits a Washington court's authority to extend that duty. He cites *Wills v. Wills*, a Nebraska case, for support. 16 Neb. App. 559, 745 N.W.2d 924 (2008).

In *Wills*, a Nebraska district court determined that the UIFSA authorized it to modify a New Mexico divorce decree by extending the duration of the father's child

support obligation, measured by the age of majority, from age 18 (New Mexico) to age 19 (Nebraska). *Id.* at 559. The Nebraska appellate court concluded that the district court erred; it held that it could not extend the duration of the support obligation because, under the UIFSA, New Mexico law governed duration; and it modified the judgment. *Id.* at 565.

The case before us is not like *Wills*. The UIFSA does not apply here because the trial court did not modify a Nebraska order or any other foreign state's order. It modified its own 2007 child support order. And, in Washington, courts may order postsecondary educational support even though child support is originally set to end when the child reaches the age of majority. *In re Marriage of Gimlett*, 95 Wn.2d 699, 704, 629 P.2d 450 (1981); *In re Marriage of Kelly*, 85 Wn. App. 785, 790, 934 P.2d 1218 (1997); RCW 26.19.090(2). The trial court here, then, had authority to extend Mr. Almgren's child support duty by ordering that he pay postsecondary educational support.

The UIFSA would not have prohibited the trial court from extending Mr. Almgren's child support duty in any event. It would have prohibited the extension only if Mr. Almgren had already fulfilled the duty or if Nebraska law did not allow such an extension. RCW 26.21A.550(3), (4). But Mr. Almgren had not fulfilled his duty before it was extended, and Nebraska law permits the extension. Mr. Almgren's original child

support obligation to his daughter was set to end when she reached the age of majority. In Nebraska, the age of majority is 19 and the obligation to pay child support ends when a child reaches age 19 unless a child support order extends the duty:

> An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by a court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstances.

Neb. Rev. Stat. § 42-371.01(1) (1997). Mr. Almgren was still obliged to pay child support for Amanda when the trial court entered the child support order of September 1, 2009, because Amanda was not yet 19. And the September 2009 order specifically extended Mr. Almgren's duty until Amanda's 23rd birthday. CP at 329 (Order of Child Support, Section 3.14). So, even assuming the UIFSA applied, the statute gave the trial court authority to extend Mr. Almgren's child support duty on September 1, 2009.

Findings Supporting Postsecondary Educational Support Award

Mr. Almgren next contends that the record does not support some of the findings underlying the trial court's postsecondary educational support award. An award of postsecondary educational support must be based on one finding and several considerations about the child and the parents:

> When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The

> court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

RCW 26.19.090(2). Mr. Almgren contends that the record does not support the trial court's findings that his daughter is dependent and that the parties had predissolution expectations for her education. He also contends that the court did not consider the parties' levels of education, current and future resources, and ability to pay for college had they stayed together.

We will not disturb the trial court's award absent an abuse of discretion. *Lambert v. Lambert*, 66 Wn.2d 503, 508, 403 P.2d 664 (1965); *In re Marriage of Newell*, 117 Wn. App. 711, 718, 72 P.3d 1130 (2003). A court abuses its discretion by making a decision based on findings of fact that are not supported by the record or based on an incorrect standard or facts that do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997); *Newell*, 117 Wn. App. at 718.

Dependent. A court cannot order postsecondary educational support unless a child

is dependent and relying upon "the parents" for basic necessities. RCW 26.19.090(2). The trial court here found that "Amanda is in fact dependent and is relying upon the parents for the reasonable necessities of life." CP at 318. Mr. Almgren asserts that Amanda is not dependent on him because he has little contact with her. He asserts that Amanda is dependent on only Ms. Schneider for the necessities of life.

A "dependent" is "one who looks to another for support and maintenance, one who is in fact dependent, one who relies on another for the reasonable necessities of life." *Childers v. Childers*, 89 Wn.2d 592, 598, 575 P.2d 201 (1978). This record shows Mr. Almgren has been supporting Amanda financially with monthly child support payments since she was six. CP at 187. And Amanda testified that she depends on Ms. Schneider *and* Mr. Almgren for the necessities of life. Report of Proceedings (RP) (Vol. B) at 50. The record, then, supports the court's finding that Amanda is dependent on *both* parents.

Expectations. Mr. Almgren next asserts that the record does not show he and Ms. Schneider had expectations for Amanda's postsecondary education while they were together. He is right. Ms. Schneider said she could not remember if she and Mr. Almgren ever talked about whether their children would go to college because they divorced when J.D.A. was three and Amanda was six. But the trial court did not find that the parties had expected that Amanda would attend college. Mr. Almgren, then, has

failed to show the trial court based its decision on the parties' predissolution expectations. We, nevertheless, presume that the court considered the evidence of their lack of expectations before awarding postsecondary support. *Kelly*, 85 Wn. App. at 793.

Education, Resources, and Support. Mr. Almgren also argues that the trial court did not consider his education, standard of living, and current and future resources or the amount and type of support he and Ms. Schneider would have given Amanda had they stayed together. The trial court, in fact, considered all of these factors. It specifically found:

- "If the parents had not divorced they would have supported college course study." CP at 318;
- "[B]oth parents have lost their jobs in the last month." CP at 319;
- "[T]hey are likely to be readily employable despite the state of the economy" because they both have advanced education and training. CP at 319;
- "Jeffrey Almgren has advanced post-secondary education training." CP at 318; and
- "The Court has chosen to use historical figures for 2008 and 2009, as shown on the Worksheets attached, for imputing income. The Court found this imputation necessary because while the economy is up and down [and] the parents may temporarily be out of work, the children continue to grow and have need for support, including college education." CP at 319.

These findings show the trial court considered Mr. Almgren's education, current and

future resources, and support.

But Mr. Almgren takes issue with the court's finding on imputed income. He contends that the trial court could not impute his income because he is not voluntarily unemployed. A trial court must impute income to a parent if it finds that parent voluntarily unemployed. RCW 26.19.071(6). It cannot impute the income of a parent who is unemployable or a parent who is unemployed or underemployed because of the parent's efforts to comply with court-ordered reunification. *Id.* The trial court here found Mr. Almgren employable and did not find him voluntarily unemployed.

No provision in the child support schedule specifically authorizes or prohibits the imputation of income of a parent in Mr. Almgren's situation. The child support schedule, including RCW 26.19.071(6), is "advisory and not mandatory for postsecondary educational support" in any event. RCW 26.19.090(1). RCW 26.19.090(2) merely requires that a court base its support award upon *consideration* of the parents' "current and future resources" and other factors. And the trial court did that here. We, therefore, affirm the award of postsecondary educational support. *Lambert*, 66 Wn.2d at 508; *see State v. Gentry*, 125 Wn.2d 570, 635, 888 P.2d 1105 (1995) ("The question is not whether we, as a reviewing court, might disagree with the trial court's findings, but whether those findings are fairly supported by the record.").

Child Support Obligation to Minor Son

Mr. Almgren next contends that the trial court abused its discretion by refusing to lower his child support obligation to his son. He argues that the record does not support the amount of gross income the court used to calculate his share of child support. He stresses again that the trial court could not impute his current income using past income figures because he is involuntarily unemployed. He also maintains that the court is statutorily prohibited from allocating more than 45 percent of his income to child support and that it failed to enter findings justifying its deviation upward from the standard calculation. Finally, he maintains that the record does not support the court's finding that he will find a job within the next six months. The record does not support the finding, but that does not affect the outcome here.

We will not disturb a trial court's decision to modify or adjust child support absent an abuse of discretion. *Newell*, 117 Wn. App. at 718. A trial court may adjust a child support order once every 24 months based upon changes in income. RCW 26.09.170(9)(a); *In re Marriage of Scanlon & Witrak*, 109 Wn. App. 167, 173, 34 P.3d 877 (2001). Any adjustment must be based on the child support schedule. RCW 26.19.035(1)(c). Any child support order must be supported by written findings of fact, including "reasons for any deviation." RCW 26.19.035(2). And no child support

obligation may exceed 45 percent of a parent's net income absent good cause. RCW 26.19.065(1).

A court determines a parent's child support obligation by considering all his income and resources, including unemployment benefits. RCW 26.19.071(1), (3). A parent, then, must *disclose* all his income and resources. RCW 26.19.071(1). He must disclose his current pay stubs, his tax returns for the past two years, or other sufficient verification to verify his income and deductions. RCW 26.19.071(2).

Mr. Almgren's motion to adjust for change of income was based on unverified claims that he lost his job and collects unemployment benefits. Mr. Almgren said he could not disclose his employer's termination letter to verify that he lost his job or he would lose any potential termination benefits that his employer might give him. So the court invited Mr. Almgren to disclose his application for unemployment benefits to verify that he lost his job. But Mr. Almgren did not disclose the application. He later testified that he was receiving unemployment benefits of $441 per week and up to $11,466 for the year:

> Q. And are you receiving unemployment from the state of Minnesota?
> A. Yes, I am.
> Q. And what about are you receiving?
> A. Ah, they awarded me $441. And I – the taxes are taken out of that, so I receive $375 a week.
> Q. Did they also give you, ah, information as to what your yearly, ah, unemployment benefit is?

A. Ah, yes. They have that in the award letter. Yes.
Q. Okay.
And was that amount, ah, for, ah, the year beginning June 7, 2009, through June 5, 2010, $11,466?
A. Yes, I believe that's correct.

RP (Vol. B) at 54-55. But Mr. Almgren also did not disclose the unemployment award letter or any other documentary evidence verifying his unemployment income. He disclosed only his pay stubs from December 2007 to February 2009 and his tax returns from 2007 and 2008 to verify his gross income. And that is all the court had to consider when calculating Mr. Almgren's child support obligation.

Those pay stubs and tax returns roughly support the gross income amount the court used to calculate Mr. Almgren's support obligation ($3,826). Based on that gross income, the standard calculation for Mr. Almgren was $823.90 per month. The court deviated downward, not upward, from the standard calculation and ordered that Mr. Almgren pay $343.87 every month for J.D.A. It ordered the deviation apparently because the parties lost their jobs and Amanda needed money for college:

> Child support for J.D.A. is lower than the standard calculation and post-educational support for A.J.A. is calculated on a total cost of $15,000 and the mother, the father and the child are each responsible for $5,000. The Court is aware that both parents have currently lost their job[s], however, there is more than enough high levels of education and technical education and they should both be readily re-employable.

CP at 326. Mr. Almgren's obligation was roughly 25 percent of his calculated monthly net income ($3,013.30). Based on the

record, then, the trial court complied with the child support schedule and did not abuse its discretion by denying Mr. Almgren's adjustment request.

In passing, Mr. Almgren also suggests that, under the UIFSA, Nebraska law controls the amount of his child support obligation. Again, the UIFSA provides the procedure for modifying the decree of *another* state. The parties here moved to modify a Washington support order, so the UIFSA does not apply.

Modifications to Health Care and Tax Exemption Provisions

Mr. Almgren notes in his statement of facts that the trial court modified health care and tax exemption provisions sua sponte. In his reply brief, he says we should sanction Ms. Schneider for these modifications because her attorney prepared the order modifying those provisions. An appellant must give "[a] separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error." RAP 10.3(a)(4). He also must offer "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). Mr. Almgren did not assign error to the trial court's modification of the health care and tax exemption provisions. Nor did he offer argument or legal authority supporting these "issues." We, then, are not obligated to address them. *Vern Sims Ford, Inc. v. Hagel*, 42 Wn. App. 675, 683, 713 P.2d 736

(1986). And we find no error in any event.

The trial court was statutorily required to order that Mr. Almgren pay .491 percent of extraordinary health care expenses. "Extraordinary health care expenses shall be shared by the parents in the same proportion as the basic child support obligation." Former RCW 26.19.080(2) (1996). Mr. Almgren's proportional share of the parties' basic child support obligation is .491 percent. CP at 359. The court, then, did not err by modifying the provision for extraordinary health care expenses.

Moreover, a trial court has discretion to allocate children as federal tax exemptions under RCW 26.19.100:

> The parties may agree which parent is entitled to claim the child or children as dependents for federal income tax exemptions. The court may award the exemption or exemptions and order a party to sign the federal income tax dependency exemption waiver. The court may divide the exemptions between the parties, alternate the exemptions between the parties, or both.

That statute does not appear to limit the court's authority to allocate the only available exemption to one parent permanently. Indeed, the authority to allocate a tax exemption and modify an earlier allocation is based on the premise that a child's best interests are served when the parents' financial situations are maximized. *In re Marriage of Peterson*, 80 Wn. App. 148, 156, 906 P.2d 1009 (1995). A trial court should allocate an exemption to the party who will benefit the most from it to ensure that it is used effectively. *Id.*

And it should modify that allocation to further ensure effective use. *Id.* Mr. Almgren does not show that he would benefit the most from the exemption or that the court's allocation is an ineffective use of the tax exemption.

Attorney Fees

Ms. Schneider requests costs and attorney fees pursuant to RCW 26.09.140 and RAP 18.1. She claims that it has been difficult financially to defend against this action because she is unemployed and supporting two children. In his reply brief, Mr. Almgren says we should deny Ms. Schneider's request for fees and costs because he is unemployed and, instead, award him fees pursuant to RAP 18.1 because of Ms. Schneider's frivolous arguments.

We deny Mr. Almgren's request for fees because it is untimely. RAP 18.1(b); *In re Marriage of Sacco*, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990). We also deny Ms. Schneider's request for fees. While this court may award fees in its discretion under RCW 26.09.140, Ms. Schneider must show her need and Mr. Almgren's ability to pay fees to prevail. *Kirshenbaum v. Kirshenbaum,* 84 Wn. App. 798, 808, 929 P.2d 1204 (1997). Ms. Schneider has not filed an affidavit of need as RAP 18.1(c) requires. And she has failed to show that Mr. Almgren is able to pay her fees.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.